

FORTY-SIXTH LEGISLATURE
FIRST SESSION, 2003

SB 123/a

February 13, 2003

Madam President:

Your CONSERVATION COMMITTEE, to whom has been referred

SENATE BILL 123

has had it under consideration and reports same with recommendation that it DO PASS, amended as follows:

1. On page 1, line 19, before "The" insert the subsection designation "A."

2. On page 1, line 25, after "to" insert in lieu thereof "Section 73-3-4.1 or Subsection E of".

3. On page 1, line 25, after the period insert new subsections B, C and D to read:

"B. The applicant for a change described in Subsection A of this section shall submit to the state engineer documentary evidence provided by the commission of the acequia or community ditch of the applicant's compliance with any applicable requirement for the change adopted by the acequia or community ditch pursuant to Subsection E of Section 73-2-21 NMSA 1978 or Section 73-3-4.1 NMSA 1978.

C. If an acequia or community ditch has not adopted an applicable requirement, the applicant shall submit to the state engineer along with the application an affidavit provided by the commission of the acequia or community ditch stating this fact.

D. If an acequia fails to make a decision within one hundred twenty days in response to an applicant's request for approval pursuant to an applicable requirement, the acequia or community ditch shall be deemed to have approved the applicant's request for approval and the state engineer shall proceed on the application as if the applicant had complied with any applicable acequia or community ditch requirement. The applicant's request shall be in writing and delivered by certified mail to the commission of the acequia or community ditch."

4. On page 4, line 14, strike "An" and insert in lieu thereof "Pursuant to rules or bylaws duly adopted by its members, an".

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5. On page 4, line 17, strike "out of or".

6. On page 4, line 20, after "ditch" strike the remainder of the line and strike line 21 up to the period.

7. On page 4, line 22, strike "if" and insert in lieu thereof "only if the commissioners determine that".

8. On page 4, line 23, after the period insert:

"The commission shall render a written decision explaining the reasons for the decision. If the person proposing the change or a member of the acequia or community ditch is aggrieved by the decision of the commission, he may appeal the decision in the district court of the county in which the acequia or community ditch is located within thirty days of the date of the decision. The court may set aside, reverse or remand the decision if it determines that the commission acted fraudulently, arbitrarily or capriciously, or that it did not act in accordance with law."

9. On pages 4 and 5, strike Section 3 in its entirety and insert in lieu thereof a new Section 3 to read:

"Section 3. A new Section 73-3-4.1 NMSA 1978 is enacted to read:

"73-3-4.1. [NEW MATERIAL] COMMISSIONERS--ADDITIONAL DUTIES-- APPROVAL OF CHANGES IN PLACE OR PURPOSE OF USE OF WATER--APPEALS.-- Pursuant to rules or bylaws duly adopted by its members, an acequia or community ditch may require that a change in the point of diversion or place or purpose of use of a water right served by the acequia or community ditch, or a change in a water right so that it is moved into and then served by the acequia or community ditch shall be subject to the approval by the commissioners. The change may be denied only if the commission determines that it would be detrimental to the acequia or community ditch or its members. The commission shall render a written decision explaining the reasons for the decision. If the person proposing the change or a member of the acequia or community ditch is aggrieved by the decision of the commission, he may appeal the decision in the district court of the county in which the acequia or community ditch is located within thirty days of the date of the decision. The court may set aside, reverse or remand the decision if it determines that the commission acted fraudulently, arbitrarily or capriciously or that it did not act in accordance with law."".

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"Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is March 1, 2004."

Respectfully submitted,

Carlos R. Cisneros, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Aragon, Duran, Gorham, Kidd

Absent: None

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